IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3240 OF 2005

With

SPECIAL CIVIL APPLICATION NO. 24772 OF 2005

With

SPECIAL CIVIL APPLICATION NO. 24774 OF 2005
To
SPECIAL CIVIL APPLICATION NO. 24775 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MORBI PASSENGERS & GOODS TRANSPORT PVT. LTD. - Petitioner(s)

Versus

STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :

MR. PRASHANT G. DESAI for the Petitioner(s).
MR. RAMKRISHNA B. DAVE for the Petitioner(s).
MR. UDAY BHATT, ASST. GOVT. PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 01/03/2006

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr.Prashant G.Desai, learned Counsel appearing in Special Civil Application No.3240 of 2005, and Mr.Ramkrishna B.Dave, learned Counsel appearing in the connected matters, are heard for the petitioners. Mr.Uday Bhatt, learned Assistant Government Pleader, is heard for the State.

2. The questions raised in all these petitions are identical, but, for the purposes of this judgement, we will take the facts from Special Civil Application No.3240 of 2005.

3. The petitioner in Special Civil Application No.3240 of 2005, who is an owner of Omnibus No. GTE 6994, submitted `NT' Forms for the month of May-2000 under Rule-5 of the Bombay Motor Vehicles Tax Rules, 1959 (for short “the Rules”); the same was sanctioned by the respondent-Authority. Immediately thereafter, the petitioner filed `NT' Forms in June and July-2000 for non-user. It was submitted by the petitioner that since the composite tax imposed by the State Government was too excessive and since there was scarcity, the petitioner was not able to run its business and the request was accordingly made for grant of `NT' Forms for the period of June and July-2000. The said `NT' Forms were rejected on the ground that same were not in consonance with Act No.11 of 2000. Immediately thereafter, the authority, *vide* its Notice dated 24th August, 2000, made a demand of tax of Rs.36,750/- and also demanded

penalty of Rs.9,188/-. The petitioner took up the matter in Appeal No.22 of 2000 before respondent No.2 under Section-14 of the Bombay Motor Vehicles Act, 1958 (for short “the Act”), read with Rule-29 of the Rules. Since after rejection of the appeal, instead of filing a statutory revision under the provisions of the Act, the petitioner has now come to this Court challenging the correctness, validity and propriety of the order, directing imposition of tax and levying penalty on the ground that Gujarat Act No.11 of 2000 was held to be *ultra vires* by this Court and the authority simply had to see that whether the vehicle was used or was kept for use or not and in case it was proved to the satisfaction of the authority that the vehicle was not used, nor was kept for use, then, no tax could be demanded and if tax had already been demanded or paid, it ought to have been refunded. It is to be seen that the Act of 1958 (Act No.65 of 1958) had undergone various changes. Though the State of Gujarat had adopted the Act on division of the State, but, later on, made various amendments in the Bombay Act. The said Bombay Motor Vehicles Tax Act, 1958 continuous to be operative in the State of Gujarat with its local amendments. Sections 3A and 3B were substituted by Section-3A of Gujarat Act No.20 of 1982 and again Section-3A was substituted by Gujarat Act No.10 of 1991. The Table appended to Section-3A was substituted by Gujarat Act No.13 of 1995 with effect from 1st August, 1995 and thereafter, Gujarat Act No.11 of 2000 made certain amendments in the said Act. Act No.11 of 2000, which became operative with effect from 1st April, 2000, made certain

amendments in the original Act, so also in Section-3A. We are not concerned with the other amendments, but, are concerned with the amendment carried out in Clause-(b) of Sub.Section-(5) of Section-3A of the Act.

4. In Clause-(b), for the portion beginning with the words “the designated omnibus in respect of which the tax has been paid” and ending with the words “three months in a year” following was substituted:

> “the designated omnibus in respect of which tax has been paid, has not been used or kept for use for a period exceeding one month in a year on account of an accident, which is registered in the Police Station or of the order of the competent court or the Government authority”.

5. This amendment was challenged before this Court in Special Civil Application No.1288 of 2001 and other connected matters. A Division Bench, by its judgement dated 17th August, 2001, observed in paragraph-41 as under:

> “41. As regards amending Act 11 of 2000 is concerned, the same is contrary to the judgment of the Supreme Court of India as the period was reduced from three months to one month and same reasons are also stated in the Act. In view of the fact that the Supreme Court in Kaushikbhai's case (AIR 2000 SC 2074) has decided that the reasons for non-use are immaterial, the amending Act 11 of 2000 is required to be quashed and set aside.”

It is to be noted that before the final judgement could be delivered in Special Civil Application No.1288 of 2001, the State Government promulgated Ordinance No.3 of 2000

to amend Act No.11 of 2000. Ordinance No.3 of 2000, which came into force with effect from 25th October, 2000, was also held to be bad by the High Court in the very same judgement in paragraph-42. Paragraph-42 reads as under :

> “Ordinance No.3 of 2000 is also bad as refund can be granted for three months by Taxing Authority and for the period beyond three months, the other authority is required to grant the refund, but then in that case, even if it is held to be valid, the refund cannot be adjusted for a period of more than three months.“

The Division Bench observed that the discussion would lead them to the only conclusion that Sections 3A(1) and (2) of the Bombay Motor Vehicles Tax Act, 1958 and amendment of Rule 5 of the Bombay Motor Vehicles Tax Rules, 1959 incorporated in Notification dated 6th February, 2001 and subsequent Circular dated 8th February, 2001 were beyond legislative competence and were required to be struck down. It is to be noted that in the meanwhile, Ordinance No.3 of 2000 was replaced by Act No.2 of 2001.

6. The State Government, being aggrieved by the said Division Bench's judgement in Special Civil Application No.1288 of 2001, took up the matter to the Supreme Court. The Supreme Court decided the matter in favour of the State Government. The judgement is reported in ***AIR 2004 SC 3894*** (***State of Gujarat & Ors. vs. Akhil Gujarat Pravasi V. S. Mahamandal & Ors.***).

The Supreme Court observed that the civil appeals were preferred by the State of Gujarat against the judgement and order dated 17th August, 2001 of a Division Bench of the High Court whereunder the Division Bench of the High Court observed that Section-3A(1) and (2) of the Bombay Motor Vehicles Tax Act, 1958 and also Rule-5 of the Bombay Motor Vehicles Tax Rules, 1959 made *vide* notification dated 6th February, 2001 were struck down and a writ of *mandamus* was issued. It is to be seen that since after the judgement of the High Court, the State Government again came out with a Notification with the amending Act No.9 of 2002. By Section-3 of the Act, Section-3A of the Principal Act was directed to be deleted. The Supreme Court, after hearing the parties, observed as under:

> "23. Nothing new has been pointed out to challenge Gujarat Act No.9 of 2002 by which the Bombay Motor Vehicles Taxation Act, as adopted in the State of Gujarat with up-to-date amendments, was further amended after the decision of the High Court, which was rendered on 17th August, 2001. In fact, the main argument of the learned counsel for the writ petitioners is that the said amending Act merely re-arranged the Sections and suffered from the same infirmity as the previous Act. Since we are of the opinion that the view taken by the High Court is not correct and Section 3-A and Rule 5 of the Rules, as incorporated *vide n*otification dated 6-2-2001 and are *intra vires* and are perfectly valid, the challenge made to Gujarat Act No 9 of 2002 has no substance and must fail."

Once the Supreme Court has observed that the amending Act 9 of 2002 was a valid piece of legislation and the notification dated 6th February, 2001 was also *intra vires,*

then, it would be tough for anybody to say that the judgement of the High Court, holding Act No.11 of 2000 to be *ultra vires* so far as it relates to Sub.Section-5 of Section-3A, still stands.

7. In an identical situation, an identical question was raised before a learned single Judge in Special Civil Application No.5715 of 2005, decided on 29th April, 2005. The Counsel appearing for one of the petitioners made concession before the Court that Gujarat Act No.11 of 2000 i.e. Bombay Motor Vehicles Tax (Gujarat Amendment) Act 2000 came to be challenged, which was struck down and held to be *ultra vires* by the Division Bench of this Court. However, the judgement of the Division Bench of this Court striking down Gujarat Act No.11 of 2000, i.e. Bombay Motor Vehicles Tax Act (Gujarat Amendment) Act 2000 came to be set aside by the Hon'ble the Supreme Court by judgement reported in ***AIR 2004 SC 3894***, meaning thereby, *vires* of the aforesaid Act came to be upheld by the Honourable Supreme Court and it was held to be *intra vires* and that Bombay Motor Vehicles Tax (Gujarat Amendment) Act 2000 came to be continued to be on statute.

8. By quoting from the judgement of the learned single Judge, we should not mean to understand that the question cannot be re-agitated before a Division Bench. The question certainly can be re-agitated before the Division Bench, but, the reasons must be germane, must be valid and must be logical.

9. The judgement of the Supreme Court (***AIR 2004 SC 3894***) has taken into consideration the amendments made in Section-3A from time to time and has observed that challenge to Gujarat Act No.9 of 2002 must fail. Once the amendment, which was proposed, in the earlier amending Act was held to be *intra vires* and the Supreme Court did not say that the earlier amending Act was *ultra vires* the Constitution or was beyond the competence of the State legislature, then, it would be too much to say that the earlier observations made by the Division Bench that Act No.11 of 2000 is *ultra vires,* would still stand to protect the petitioners. The petitioners, who were parties before the Supreme Court, should have sought a clarification from Their Lordships of the Apex Court that whether the correctness, validity and propriety of Gujarat Act No.9 of 2002 only was being upheld or whether the Supreme Court was holding that everything was not valid. It is further to be seen that in paragraph-24, the Apex Court had observed as under:

> "In the result, Civil Appeal Nos.6462-6464 of 2001 filed by the State of Gujarat are allowed and the impugned judgment and order dated 17-8-2001 of the High Court is set aside. Writ Petition Nos.249 and 252 of 2002 filed in this Court are dismissed."

10. Once the judgement dated 17th August, 2001, holding Act No.11 of 2000 in relation to amendment in Section-3A, Sub-Section-(5) *ultra vires*, was set aside by the Supreme Court, then, no part of the judgement would survive. The endeavour of the learned Counsel that the Supreme Court had set aside the

judgement in relation to Act No.9 of 2002 only cannot be upheld. The Supreme Court did not say that it was modifying the judgement of the High Court or was making a little interference into it. The Supreme Court pointedly set aside the judgement dated 17th August, 2001. Once the judgement dated 17th August, 2001 was set aside, then, the observations of the High Court, holding Act No.11 of 2000 to be *ultra vires* the Constitution, also go.

11. In view of the aforesaid discussion, we are unable to hold that Act No.11 of 2000 is *ultra vires* the Constitution or the State Government is not justified in making the demand or imposing penalty. The petitions are dismissed, Rule is discharged. However, there shall be no order as to costs.

[R.S.Garg, J.]

[Bankim N. Mehta, J.]

*kamlesh**